

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1350 OF 2007

Kalu Tanaji Ahire ..Petitioner
Vs.

The State of Maharashtra ..Respondent

Mr. D.S. Joshi i/by Mr. I.R. Kulkarni for petitioner.
Mr. S.R. Shinde, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : July 24, 2007.

P.C.:

1. Heard Mr. Joshi with Mr. Kulkarni the learned counsel for the petitioner who is an accused under trial in Sessions Case No. 238 of 2000 before the Additional Sessions Judge, Malegaon at Nasik. An application at Exh.28 came to be filed by the prosecution in the said case praying for directions to follow the guide-lines laid down by the Supreme Court in the case of Sakshi vs. Union of India [AIR 2004 SC 3566]. The said application was opposed by the accused-petitioner and by the impugned order dated 7/3/2007 the learned Additional Sessions Judge allowed the application.

2. It was submitted by the learned counsel for the applicant that unless Section 327 (2) of Cr.P.C. is amended, the defence counsel cannot be called upon to give in writing in advance the questions that he proposed to put to the prosecutrix in the cross-examination while she is being examined in-camera and such a right cannot be taken away unless the Parliament amends the concerned provisions of the Cr.P.C. In the case of Sakshi (Supra) while disposing off the writ petition following directions were given by the Supreme Court:-

(1) The provisions of sub-section (2) of Section 327 of Cr.P.C. shall in addition to the offences mentioned in the sub section would also apply in inquiry or trial of offences under Sections 354 and 377 of IPC.

(2) In holding trial of child sex abuse or rape:

(i) a screen or some such statements

may be made where the victim or witness (who may be equally vulnerable like the victim) do not see the body or face of the accused;

(ii) the questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident, should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;

(iii) the victim of child abuse or rape, while giving testimony in Court, should be allowed sufficient breaks as and when required."

3. It is thus clear that in Sakshi's case the Supreme Court held that (a) provisions of Section 327

(2) of Cr.P.C. are applied to the inquiry or trial of offences under Sections 354 and 377 of IPC and (b) in holding trial of child sex abuse or rape the questions put in cross-examination on behalf of the accused in so far as they relate directly to the incident should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing.

4. The learned Additional Sessions Judge considered the nature of directions and held that they are applicable in the trial of Sessions Case No.238 of 2000 more so when the prosecutrix appeared to be a child. The reasoning set out by the learned Additional Sessions Judge, therefore, cannot be termed as erroneous or perverse and the view taken by the said court is in keeping with the law laid down in Sakshi's case (Supra).

5. Hence the application is rejected summarily

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(B.H. Marlapalle, J.)